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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,656

12/30/2005

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SF-112

9556

42419 7590 07/24/2008
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EXAMINER

GANESAN, SUBA

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

07/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 15-18, 20-28, and 35-36 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

2. Claims 18 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15-17, 21-24, 26-28, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Waits (U.S. Pat. No.: 5,593,445).

5. Waits discloses and arthroplasty implant with a first component 40 and a second component 12, both components having a connector and being attached to a body member (see abstract); and an intermediate component 53 with a convex surface and a concave surface slidable on the first and second component, respectively (see figs. 5). The intermediate component allows articulation and lateral translation to take place in mutually orthogonal directions between both the first and second components and the intermediate component (col. 3 lines 24-32). The first component and the intermediate

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component are complementally curved, with radii that can differ in mutually orthogonal directions. The intermediate component includes a recess (fig. 5) that prevents lateral separation and limits articulation and translation via projection 48 on the first component. The first and second component include projecting posts 17a, 8. The intermediate component is ultra high molecular weight polyethylene (col. 6 lines 1-19). The projection comprises a laterally outwardly facing projection 50 (see fig. 4). The recess comprises a laterally inwardly facing recess due to the mobility of the bearing. The projection is a ring 50 and the annular member includes a rib 71. With respect to claim 28, the intended use of a claimed invention carries no patentable weight in the absence of distinguishing structure.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waits (U.S. Pat. No.: 5,593,445).

8. Waits is explained supra. However, Waits fails to show use of grade 5 titanium with a titanium nitride finish. However, use of this material would have been obvious to one of ordinary skill in the art since doing so is simply selecting from a known range of suitable biocompatible implant materials.

9. Waits discloses movement of the intermediate component towards the periphery of the first component during loading (See fig. 9A-D), as well as a motion limiting projection 48. However, Waits fails to show the intermediate component peripheral edge contacting the first component peripheral edge at the maximum limit of relative movement. It would have been obvious to one of ordinary skill in the art to have provided the motion limiting projection as disclosed by Waits with a dimension such that during maximum relative motion of the first and intermediate components, the peripheral edge of the intermediate component contacts the peripheral edge of the first component, since such an effect would be the simple result of modifying the dimension of the limiting component 48. A change in size has been held to be well within the ordinary skill of a worker in the art. One would be motivated to provide such a change in dimension for the purpose of controlling the amount of articulation and translation allowed by the components.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUBA GANESAN whose telephone number is (571)272-3243. The examiner can normally be reached on M-F 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. G./
Examiner, Art Unit 3774

/William H. Matthews/
Primary Examiner, Art Unit 3774